IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 412 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAVITABEN AMTAJI VANAJI

Versus

STATE OF GUJARAT

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Appearance:

MR PK JANI for Petitioner

MR ST MEHTA APP for Respondent No. 1

MR MJ BUDHBHATTI For No.2 (appointed)

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/09/2000

ORAL JUDGEMENT

This Revision Application under section 397 read with section 401 CRPC has been preferred by the complainant in Criminal Case No. 884/89. The accused-respondent no.2 has not entered the appearance.

Learned advocate Mr. M.J.Budhbhatti is appointed to represent the accused and to assist the court on behalf of the respondent no.2.

It appears that on 4th February, 1989, the complainant lodged a complaint against the accused Fakir Karimsha Nirusha for offence punishable under section 354 IPC. Before the trial could proceed further, the learned Judicial Magistrate, First Class, Sidhpur, by his order dated 8th August, 1996, discharged the accused pursuant to the judgment of the Hon'ble Supreme Court in the matter of 'COMMON CAUSE' A REGISTERED SOCIETY, THROUGH ITS DIRECTOR VS UNION OF INDIA & ORS (AIR 1996,SC,1619). Feeling aggrieved, the complainant has preferred the present Revision Application.

Mr. Unwala has submitted that the trial had protracted on account of the dilatory tactics adopted by the accused in as much the accused did not attend the trial for nearly six years i.e. from the year 1990 to 1996. On several occasions, the court had to issue summons against the accused. Mr. Unwala has relied upon the Rojkam of the trial. He has submitted that the aforesaid judgment of the Hon'ble Supreme Court has been clarified in its judgment in the matter of 'COMMON CAUSE' A REGISTERED SOCIETY THROUGH ITS DIRECTOR (AIR 1997 SC 1539). In the said judgment, it has been clarified " The time limit mentioned regarding the pendency of criminal cases in paragraphs from 2 (a) to 2 (f) of our judgment shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly atributable to the dilatory tactics adopted by the concerned accused or on account of any other action of the accused which results in prolonging the trial ". It may be noted here that the Hon'ble Supreme Court has also observed that - " The cases wherein the concerned accused are already acquitted or discharged pursuant to the said order dated 1st May, 1996, such acquitted or discharged accused shall not be liable to be recalled for facing such trial pursuant to the present clarificatory order which qua such offences will be treated to be purely prospective and no such cases which are already closed shall be reopened pursuant to the present order ". This only means the cases which were closed pursuant to the directions issued by the Hon'ble Supreme Court on 1st May, 1996, shall not be re-opened under the clarification issued in the above judgment. However, in the present case, the said observations shall not be applicable since the complainant has challenged the order of discharge. If the complainant had not challenged the order of discharge and had permitted the order of discharge to

become final, the order of discharge could not have been recalled under the above clarificatory order.

Upon perusal of the Rojkam, it is evident that the proceedings in the Criminal Case No. 884/89 could not proceed further for want of presence of the accused. Since 7th August, 1990, the accused has almost consistently, baring a few occasions, has avoided to attend the proceedings. On the few occasions when he was present before the court, he had applied for adjournment. Thus, it is evident that the proceedings in the Criminal Case No. 884/89 has prolonged on account of the dilatory tactics adopted by the accused. In such cases, the order of discharge is not warranted though the proceeding has prolonged for a long time.

In above view of the matter, the Revision Application is allowed. The order dated 8th August, 1996, made by the learned Judicial Magistrate First Class, Sidhpur, in Criminal Case No. 884/89 is quashed and set aside. The Criminal Case No. 884/89 is ordered to be restored on the files of the learned Magistrate. The learned Magistrate will now proceed with the case in accordance with law with requisite promptitude. Rule is made absolute.

( MS R.M.DOSHIT J )

JOSHI